

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No 885 of 2022

Tuesday, this the 21st day of March, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ex JWO Baldev Singh Grewal, Service No: 297786-R, Son of : Sri Karnail Singh, C/o : Gp Capt SS Grewal, Room No: 7/1/8, Central Command Office’s Mess, 11 Kasturba Marg, Lucknow Cantt, Lucknow (UP) - 226002.

..... Applicant

Ld. Counsel for the Applicant : **Shri VK Chahar, Advocate**

Versus

1. Union of India, Represented by - The Secretary, Govt of India, Ministry of Defence, South Block, New Delhi - 110011.
2. The Chief of the Air Staff, Air Headquarters, Vayu Bhavan, New Delhi -110106.
3. The Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi - 110010.
4. The JCDA (Air Force) Subroto Park, New Delhi- 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri JN Mishra,**
Central Govt. Counsel.

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(i) accept / declare the invalid disease (ID) “Inferior Wall M1 and Essential Hypertension” of the Applicant as attributable to or aggravated by the Military Service.

“(ii) grant Disability element of Disability Pension @ 30% to the Applicant with effect from 01.10.2000 (next date of Discharge) with the benefits of Broad Banding with all consequential benefits.

And pass such further and other orders as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 26.09.1968 and was discharged from service on 30.09.2000 (AN) in low medical category after serving more than 32 years of service. The Release Medical Board (RMB) assessed his disabilities (i) **“Inferior Wall M1” @ 30%** for 2 years, (ii) **“ESSENTIAL HYPERTENSION” @ 30%** for 02 years and

composite disability assessed @ 30% and opined that all the disabilities of the applicant were neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 30.10.2003. Thereafter, applicant submitted an appeal dated 22.06.2022 which has also been rejected by the respondents vide order dated 14.07.2022. Being denied by disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh vs. Union of India & Others*** (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of

the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 30% for two years and its rounding off to @ 50% for two years.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 30% for two years, but submitted that competent authority while rejecting the claim of the applicant has viewed that disability was found as not attributable but aggravated to military service. As such, under the provisions of Rule 153 of Pension Regulations for Indian Air Force 1961 (Part 1), his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Army Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words :

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during

service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. Thus, considering all issues we have noted that the only reason given by RMB for denying Attributability is due to constitutional disease not connected to service. We are not convinced by this logic that stress & strain of military life is only in Fd/HAA/CI areas and there is no such stress in peace areas. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease as aggravated by military service.

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

9. Since the applicant's IMB was valid for two years w.e.f. 01.10.2000, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

10. In view of the above, the Original Application No. 885 of 2022 deserves to be allowed, hence **allowed**. The impugned orders rejecting the claim for grant of disability pension passed by the respondents are set aside. The disability of the applicant to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant from the date of discharge @ 30% for two years which would stand rounded off to 50% for two years. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

11. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 21, March, 2023
UKT/-